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tures, and *The First Book of Jurisprudence*. His *Land Laws*—a work of art—states clearly and exactly the principles of the law of real property: so clearly that any intelligent layman may comprehend them, so exactly that any lawyer may with profit review them. Students of political science and philosophy are indebted to him for his *Introduction to the History of the Science of Politics*, and *Spinoza, His Life and Philosophy*. His Introduction to the Lectures and Essays of William Kingdon Clifford is a touching tribute to the memory of a friend.

While he is a learned man of letters, Sir Frederick is by no means a recluse; he is much interested in current events, and is a close observer of modern institutions.

Though he says his "mountaineering youth is past," he is still an expert fencer—as was demonstrated here. Of this somewhat neglected art, he writes: "I must add my voice to those of a long chain of authorities, medical and other, to bear witness that the exercise of arms, whether in the school of the small-sword, or in the practice, more congenial, perhaps, to the English nature, of the sturdier sabre, is the most admirable of regular correctives for the ill habits of a sedentary life." (*Oxford Lectures, Etc.*, p. 298).

He must still find some such corrective of advantage, for, with all else, he edits the *Law Reports* and *The Law Quarterly Review*.

CORPORATIONS — RAILROADS — STOCKHOLDING CORPORATIONS — COMBINATIONS IN RESTRAINT OF TRADE AND COMMERCE — CONSOLIDATION OF PARALLEL AND COMPETING LINES.—The Great Northern Railway Co. of Minnesota, and the Northern Pacific Railway Co. of Wisconsin, with articles of incorporation filed in Minnesota, separately own and operate competing and parallel lines of railway from Duluth to Puget Sound, crossing the state of Minnesota. In 1901, these two companies purchased all the stock of the C. B. & Q. R. R. Co. (\$108,000,000) for \$216,000,000, for which the joint bonds of the Great Northern and Northern Pacific companies were issued, secured by pledge of the Burlington stock purchased. The Union Pacific asked to be allowed to share in this purchase, and upon refusal, began to buy Northern Pacific stock, "intending thus to acquire a majority of that stock, and the control of that company, with its half interest in the Burlington system." J. P. Morgan & Co. then began the purchase of Northern Pacific common stock, and secured \$15,000,000 thereof; this with what that firm, and the Great Northern people already owned gave a majority of the *common stock*; this stock carried with it the power to retire the preferred stock of the Northern Pacific at par in January of any year. Morgan, Hill and those holding this stock determined to do so, and thereby defeated the purpose of the Union Pacific, which owned \$37,000,000 common, and \$41,000,000 preferred Northern Pacific stock. An understanding or compromise was effected whereby the Northern Securities Co. was organized in New Jersey with \$400,000,000 stock, to take over the shares of the Great Northern at \$180 in Northern Securities stock for each \$100 Great Northern, and \$115 Northern Securities, for each \$100 Northern Pacific,—the Union Pacific people to receive over \$80,000,000 Northern Securities stock for their Northern Pacific holdings. At the time of suit, the Securities Co. had acquired 96 per cent of Northern Pacific, and 76 per cent Great Northern stock.

The state brought suit against the Securities Co., and both railroad companies, and the individual promoters of the scheme, on the ground that it violated the Minnesota anti-trust act, and the anti-consolidation of parallel lines law. These provided: "Any contract, agreement, arrangement, or conspiracy, or any combination in the form of trust or otherwise, * * which is in restraint of trade or commerce" is hereby prohibited. Also "No railroad corporation, or the lessees, purchaser, or manager of any such railroad corporation, shall consolidate the stock, property or franchise of such corporation with, or lease or purchase the works or franchise of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line."

Held, by *Lochren, D. J.*, on the first point, that the state anti-trust law was substantially the same as the National law, except in being applicable to state commerce only. After reviewing the decisions of the Supreme Court of the United States, he concludes: Neither of the railway companies was a party to, or in its corporate capacity had anything to do with the formation of the Securities Co., nor of any of the contracts or proceedings complained of in the bill. The Securities Co. is merely an investor and owner of the majority of the stock of the railroad companies; it is not a railroad company, and has no franchise or power to manage or operate or direct the management or operation of either railroad in respect to rates or charges for transportation or otherwise; and there is no evidence that it has sought to do so. It has therefore done no act and made no contract in restraint of trade or commerce. It has the power to elect the board of directors of both companies, but these are different bodies, and no director of one company can be a director of the other; the directors of each company will appoint its managing officers, and presumably they will seek in lawful ways to increase the business and prosperity of the railroad which they represent. The judge admits that this view is in direct conflict with the unanimous decision of the Court of Appeals in *U. S. v. Northern Securities Co.*, 120 Fed. 721, which he epitomizes: "It is held that it will be for the interest of the Northern Securities Co., to restrain trade by suppressing competition between these two railroad companies, and that by coercing or persuading the two boards of directors, whom it has the power to elect, it will certainly cause them to commit highly penal offenses, by entering into combinations, contracts and arrangements in restraint of trade, in violation of the anti-trust act, and hence the Northern Securities Co. is already guilty of these offenses that have never been committed or thought of by its officers or promoters, so far as appears, and it must be suppressed and destroyed."

Upon the second point, the judge says: The prohibition against consolidation applies: (1) To railroad corporations. The Securities Co. is not a railroad corporation, and neither railroad company in its corporate capacity did any of the acts charged. (2) Lessees of railroad corporations. There were none. (3) Purchasers of railroad corporations. Construing this term as applying to those who acquire by deed or decree, having capacity to hold and enjoy the franchises and operate the railroad, there were none in this case. (4) Managers of railroad corporations. A railroad manager is the person having the administration, charge and oversight of the operation and business of the railroad. Among the parties concerned, Mr. Hill alone was a railroad manager. He did not effect any consolidation. He promoted the formation of the Securi-

ties Co., and sold to it stock of both railroad companies. When it was urged that after the Securities Co. in 1901 had become the owner of a majority of the Northern Pacific stock, and had thereby become the purchaser of that road within the meaning of the law, and was thereafter disqualified from acquiring the stock of the Great Northern, the court said the Securities Co. cannot "Assume the control, management, and operation of the railroad, the stock of which it had so acquired." "The case would not be different," says Judge Lochren, "if one natural person with abundant capital should invest in the majority of the stocks of one of these companies, and another like person should invest in the majority of the stocks of the other company. The interest of the two, if they chose to act in harmony, would be the same as the interest of one person owning the whole."—(1903), *State of Minnesota v. Northern Securities Co.*, 123 Fed. R. 692.

It will readily be seen that this decision involves the absurd position upon both points, that the acts of the shareholders of the railway companies in putting them under the control of the Securities Co., were not the acts of those corporations, and that the acts of the Securities Co. in controlling the railway companies are not the acts of those companies. Such a position when the State complains, is the purest, technical fiction, never believed, acted upon, or argued, except when laws can be evaded in no other way. The dullest business man knows the truth to be otherwise, and no judicial casuistry can conceal it, or scarcely obscure it. The court wholly ignored the cases upon this point relied upon by the Court of Appeals in the Federal case,—only one of which it mentioned for another purpose; these are: *Pearsall v. Great Northern Railway Co.*, 161 U. S. 646; *Pennsylvania R. Co. v. Commonwealth.* (Pa.) 7 Atl. 368; *Farmers' Loan & Trust Co. v. N. Y. & N. R'y Co.*, 150 N. Y. 410; *People v. Chicago Gas Trust Co.*, 130 Ill. 268, 8 L. R. A. 497, 17 Am. St. R. 319. The conditions existing here bring the parties fairly within what Judge Finch said in *People v. North River Sugar Ref. Co.*, 121 N. Y. 582, 18 Am. St. R. 843: "I think there may be actual corporate conduct which is not formal corporate action; and where that conduct is directed or produced by the whole body, both of officers and stockholders, by every instrumentality which can possess and wield the corporate franchise, that conduct is of a corporate character, and if illegal and injurious may deserve and receive the penalty of dissolution." See also *State v. Standard Oil Co.*, 49 Ohio St. 137, 34 Am. St. R. 541; *Ford v. Chicago Milk Shippers Association*, 155 Ill. 166. The case has been removed to the Supreme Court of the United States.

CONSTITUTIONAL LAW—CLASSIFICATION—LIMIT OF JUDICIAL CONSTRUCTION.—Several interesting and important questions of constitutional law were recently discussed and resolved in the case of *Ballard v. Mississippi Cotton Oil Co.* (1903), — Miss. —, 34 So. Rep. 533. An act of the legislature, 1898, provided that "every employee of any corporation shall have the same rights and remedies for an injury suffered by him from the act or omission of the corporation or its employees, as are allowed to persons not employees," whether the injury results from the negligence of fellow servants or other employees of the corporation. Knowledge by the employee of defects in the machinery from which injury results is no defense except in certain cases.